

AG Contract No.: KR 04-1770TRN
ADOT ECS File No.: JPA 04-123
Project No.: TEA 083-A-(1)
Project: Scenic Acquisition on SR 82 & SR 83
Section: Along Patagonia-Sonoita Scenic Rd
TRACS No.: H6106 01R
Budget Source Item No.: 75305

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE SOUTHEAST ARIZONA LAND TRUST

THIS AGREEMENT is entered into June 6, 2005, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the SOUTHEAST ARIZONA LAND TRUST, ARIZONA, PO Box 116, Sonoita, AZ 85637, a non-profit corporation, acting by and through its Board of Directors (the "SEALT").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-408 and § 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The SEALT is empowered by its Board of Directors to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the SEALT.
3. Congress has authorized appropriations for, but not limited to, the twelve eligible transportation enhancement (TE) activities.
4. The State and the SEALT are in mutual agreement to participate in TE activity 3, the acquisition and management of scenic easement for the locations along Patagonia-Sonoita Scenic Road as shown on Appendix 1, attached hereto and made a part hereof, hereinafter referred to as the "Project". Both parties agree that the SEALT will be the lead agency of the Project to conduct all necessary studies and investigations toward determining the most appropriate site(s) for the Project and therefore manage the Project in perpetuity. The State will be responsible to provide a one time lump sum amount of \$585,000.00 as its share of the Project. The responsibility of each of the parties is defined in this Agreement under Section II. Scope of Work.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

NO. 27543
Filed with the Secretary of State
Date Filed: 6/06/05
Janice K. Brewer
Secretary of State
By: Mary Vandever

II. SCOPE OF WORK

1. The SEALT shall:

a. Upon execution of this Agreement, provide a Bill(s) of Sale to show the acquisition of the easement for the reimbursement of a total amount not to exceed \$585,000.00 as its share of the Project

b. Be responsible for any and all costs of the Project over and above the State's share of \$585,000.00.

c. Be the lead agency to conduct all necessary studies and investigation toward determining the most appropriate site(s) for the Project.

d. Be responsible to provide copies of all studies, reports and Bill(s) of Sale to the State for review and comment.

e. Be responsible to manage the Project and/or the easement(s) acquired as a result of this Agreement in perpetuity.

f. Acknowledge and agree that the Project site(s) are not to be leased for revenue generation if said sites are acquired and owned in fee simple by SEALT; and furthermore provided, that the fee owners (other than SEALT) of the sites may use the sites for agricultural purposes, grazing, and for the operation of cattle ranches and may lease those sites for similar types of uses.

g. Acknowledge and agree that in the future, if a widening or repairs along the easement(s) on State Route(SR) 82 and/or SR 83 are necessary, access to the easement(s) will be granted to the State/ADOT at no cost(s) over the portions of the easement adjacent to the right of way while the work is performed, provided that upon completion of the work the State/ADOT will at its expense restore the easement area, including fencing, if any, to substantially the condition that existed prior to such temporary access.

2. The State shall:

a. Review the studies, reports and Bill(s) of Sale and provide comments as appropriate.

b. Upon execution of this Agreement and within 30 days of receipt of an invoice and Bill(s) of Sale, reimburse SEALT in a total amount not to exceed \$585,000.00 as its share of the Project. The State shall have no other direct or indirect responsibilities with respect to the monetary contribution defined herein.

III. MISCELLANEOUS PROVISIONS

1. The State has no direct interest in Project. The only interest of the State in this Agreement is to provide monetary contribution to the Project.

2. The SEALT shall not transfer, sell, assign or otherwise dispose of all or any part of the Agreement or the rights hereunder without prior written consent to the State.

3. The SEALT agrees to indemnify and save harmless the State, including its departments, officers, and employees, from and against all losses, expenses, damages, or claims of any nature whatsoever arising out of the negligence or willful misconduct of the SEALT or its officers or employees in the performance of any of the provisions of this Agreement.

4. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said Project and related deposits or reimbursement.

5. This Agreement shall become effective upon filing with the Secretary of State.

6. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

7. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

8. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds. Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

10. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

11. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712 7424

Southeast Arizona Land Trust
Executive Director
P O Box 116
Sonoita, Arizona 85637-0116

12. Pursuant to Arizona Revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

SOUTHEAST ARIZONA LAND TRUST

STATE OF ARIZONA

Department of Transportation

By



SHELDON CLARK
President

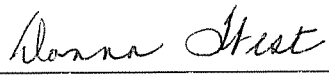
By



SUSAN TELLEZ
Contract Administrator

ATTEST

By



DONNA WEST
Administrative Assistant

Scenic Easements

The Arizona Transportation Enhancement Program is sponsored by the Arizona Department of Transportation with support from the Federal Highway Administration through the Transportation Equity Act for the 21st Century (TEA-21). The program provides funding to transportation-related projects that enhance typical surface transportation activities. The acquisition of scenic easements is one of twelve enhancement activities eligible for TEA-21 funding, and in November 1996 an application was made to acquire funding for scenic easements along the Patagonia-Sonoita Scenic Road. The application was accepted and \$585,000 is available for scenic easements once potential locations are identified in the Corridor Management Plan.

The Role of the Corridor Management Plan

The Corridor Management Plan for the Patagonia-Sonoita Scenic Road identifies areas of greatest concern or of highest potential for scenic easements. These suggestions will then be used by ADOT Right-of-Way to negotiate easements. On March 25, 2002, community members, ADOT, and the consultants attended a scenic road site visit, and identified key locations for easements along the route. Refer to the map at the end of this appendix for these locations.

Site Visit Attendees

- Annie McGreevy
- Kathie Knapp, Project Manager, ADOT Roadside Development
- Pete Mayne, ADOT Right-of-Way
- Don McIntosh
- Jim Hathaway
- Jake Kittle
- Doris Wenig
- Laura Mielcarek, Wheat Scharf Associates
- Darlene Showalter, Wheat Scharf Associates
- Kenn Schultz



The Role of the Southeastern Arizona Land Trust (SEALT)

SEALT was established in 1995 as a non-profit private entity to hold conservation easements in the scenic reaches of State Routes 82 and 83. The mission of SEALT is to work cooperatively with private landowners to protect the natural ecosystems and historic ranching traditions of southeastern Arizona. The organization provides technical assistance to those seeking conservation easements and is entrusted with the monitoring responsibility on land in which it holds easements.

Contact Information: Southeastern Arizona Land Trust, PO Box 116, Sonoita, AZ 85637

Land Ownership along the Scenic Road

State Lands: The majority of the land from the beginning of the scenic road at milepost 58.0 to where it enters the Coronado National Forest at milepost 46 is state trust land. Easements on state trust land are expensive because the state is obligated to accept nothing less than 100% of the appraised value.

United States Forest Service Land: State Route 83 travels through Coronado National Forest. All United States Forest Service land visible from State Route 83 or 82 has been classified as having extremely high or very high public value. Locations identified as possible sites for scenic pull-outs are adjacent to national forest land.

Bureau of Land Management: The lands of Las Cienegas National Conservation Area comprise most of the viewshed to the east of State Route 83 from the Empire Mountains to Sonoita. The Las Cienegas Resource Management Plan and Environmental Impact Statement classifies most of Las Cienegas National Conservation Area as Class II according to the Bureau of Land Management Visual Resource Inventory. Management of Class II landscapes requires that any changes made in the viewshed must repeat the basic elements of form found in the natural features of the existing landscape.



Land Ownership along the Scenic Road cont.

Private Land: All of the land adjacent to State Route 82 from Sonoita to Nogales is privately owned. Land from Sonoita north to milepost 36.8 is also privately owned, as well as small patches in Pima County at the north end of the scenic road. Conservation easements have been suggested as a way to preserve open space while still allowing for private ownership and use of the land. Along the scenic road, easements would allow traditional ranching activities to occur while preserving open space for scenic views.

On land where development is inevitable, scenic easements can be selected to protect portions of a parcel where development would most impact the scenic quality of the road. For example, if the ridges were conserved as open space near the entrance of Patagonia Lake State Park, the fabulous views to the west could be preserved and developable land would still be available.

Definition of Terms

Scenic: Scenic America, Inc. defines "scenic" as the composition of features that are regionally representative, associative or inspirational; and these features are measured by their memorableness and distinctiveness of visual impression, their intactness and their unity.

Easement: The rights to specific limited use or enjoyment granted to an individual or nonprofit organization by a property owner.

Conservation Easement: An easement in which the purpose of specific limited uses is to conserve natural or man-made resources on the land. Conservation easements are tailored to the needs of each landowner and can take many specific forms.

Scenic Easement: A special type of conservation easement that restricts certain types of activities that will affect the aesthetic values of the landscape or viewshed.

Transfer Development Rights (TDR): The right to develop a parcel of land that is valuable as open space can be separated from the ownership of the land, and those development rights can be sold and used on land that is more appropriate for development.



Definition of Terms cont.

Purchase Development Rights (PDR): Similar to TDR's in that the development rights can be separated from the land itself and sold to a government agency or nonprofit group. This type of transaction allows the private landowner to realize the development value of the land without having to develop it.

Easement Holder: Usually a government agency or nonprofit group that assumes the long-term responsibility for monitoring and enforcing a conservation easement.



State Route 83 looking West



Sonoita Crossroads Community Forum Visual Preference Survey

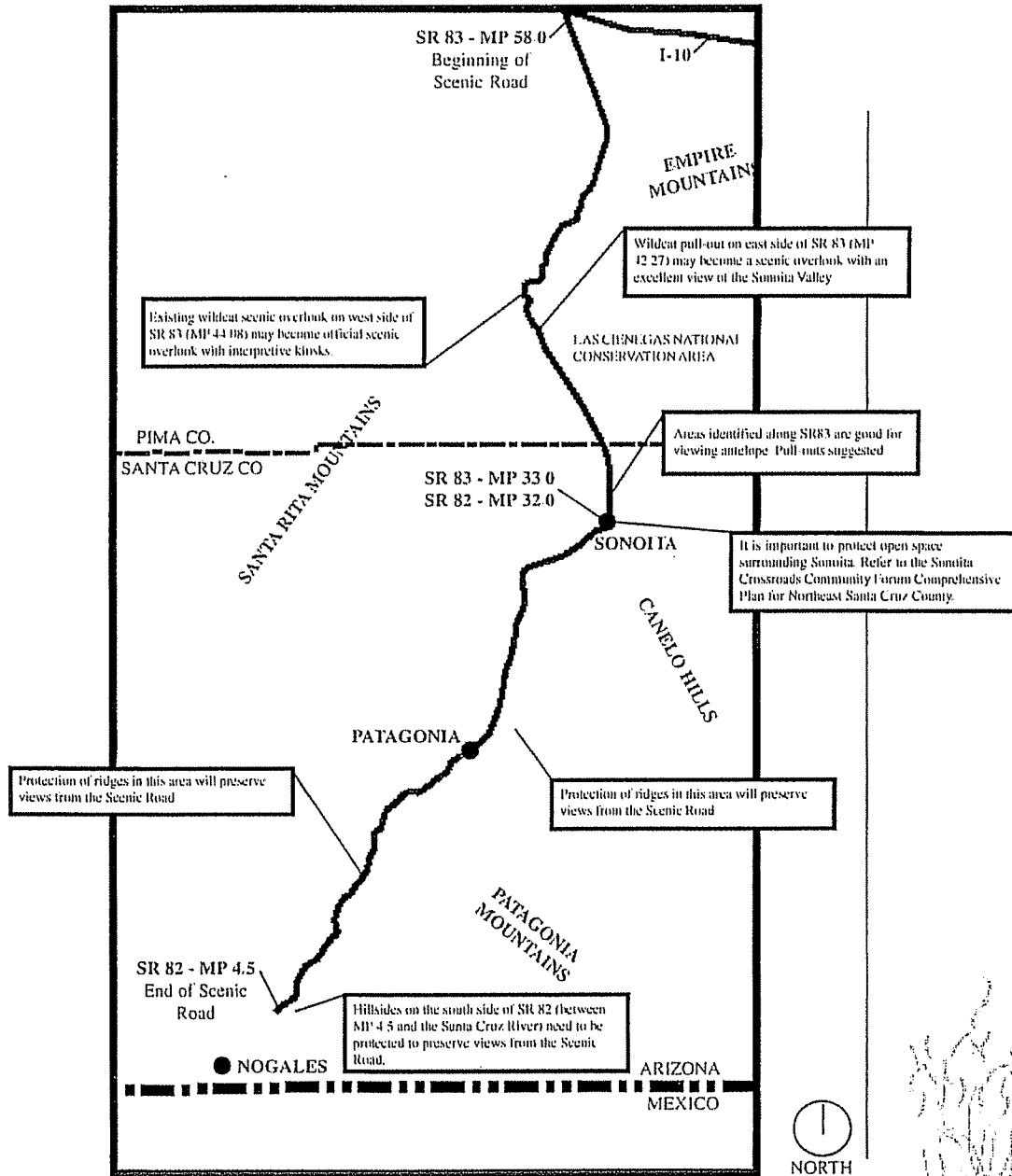
The Sonoita Crossroads Community Forum is a nonprofit organization made up of citizens from northeastern Santa Cruz County. The goal of the group is to develop a comprehensive plan for northeastern Santa Cruz County using a community-based process. As part of the information-gathering portion of the planning process, a visual preference survey was conducted to identify views that are most valued by the people of Northeastern Santa Cruz County.

The results of this survey should be considered when selecting possible locations for scenic easements. It is especially important to look at the types of landscapes most preferred by residents: views of distant mountain ranges, oak woodlands and riparian meadows and open grassland vistas. It is also useful to note the types of views that were least preferred by residents. These include views of road cuts and views dominated by buildings.

Some of the "top 20" slides included:

1. Views of the Mustang Mountains from State Route 82 (the 3 most favored views)
2. Views from State Route 83 in the Canelo area that showed oak woodland, a riparian meadow, the Canelo Hills, and the Huachuca Mountains
3. Views of the Babocomari and Empire ranches, both with and without mountains in the background
4. Views from State Route 82 just north of Patagonia looking southeast across the Sonoita Creek bottomlands
5. Views of oak woodlands along State Route 82 near the Ft. Buchanan site
6. Views along State Route 83 north of the Crossroads, looking across open grasslands west toward the Santa Rita Mountains and east toward the Mustang Mountains.





Map of Patagonia-Sonoita Scenic Road



**SOUTHEAST ARIZONA LAND TRUST
SPECIAL BOARD MEETING
TUESDAY, MAY 19, 2005
VIA TELECONFERENCE**

PARTICIPATING VIA CHORUS CALL: Ben Brophy, Shel Clark, Julie Holding, Fred McGee, and Karen Riggs

ABSENT: David Kendall and Jeff Becker

A quorum was established (5 of 7) so the meeting continued. Fred McGee proposed the following motion:

Motion to authorize the President of Board of Directors of Southeast Arizona Land Trust to enter into the cooperative agreement with the Arizona Department of Transportation dated May 7, 2005, as amended by request of Southeast Arizona Land Trust and David Fletcher, Attorney for Southeast Arizona Land Trust), granting \$585,000 in Highway Enhancement Funds for acquisition of scenic easements along Highways 82 & 83.

Second to Motion: Karen Riggs

Motion passed unanimously

Respectfully submitted by

Donna R. West



APPROVAL OF THE SOUTHEAST ARIZONA LAND TRUST ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the SOUTHEAST ARIZONA LAND TRUST (SEALT), an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 28-408 through § 28-334 and declare this agreement to be in proper form and within the powers and authority granted to the SEALT under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 13th day of May, 2005.

David L. Stephen

SEALT Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1770TRN (JPA 04-123), an Agreement between public agencies, i.e., *The State of Arizona* and *The Southeast Arizona Land Trust*, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: May 31, 2005

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written over a horizontal line.

Susan E. Davis
Assistant Attorney General
Transportation Section

SED:mjf
Attachment
907522